

BEFORE THE DIVISION OF INSURANCE

STATE OF COLORADO

STIPULATED FINAL AGENCY ORDER O-00-127

IN THE MATTER OF THE MARKET CONDUCT EXAMINATION OF STEWART TITLE GUARANTY COMPANY,

Respondent

THIS MATTER comes before the Colorado Commissioner of Insurance (the "Commissioner") as a result of a market conduct examination conducted by the Colorado Division of Insurance (the "Division") of Stewart Title Guaranty Company (the "Respondent"), pursuant to §§ 10-1-201 to 207, C.R.S. The Commissioner has considered and reviewed the market conduct examination report, dated June 22, 1999, (the "Report") relevant examiner work papers, all written submissions and rebuttals, and the recommendations of staff. The Commissioner finds and orders as follows:

FINDINGS OF FACT

1. At all relevant times, the Respondent was a corporation licensed by the Division and authorized to conduct the business of title insurance, as defined by § 10-11-102(3), C.R.S.
2. The Respondent is a wholly-owned subsidiary of the publicly-traded Delaware Corporation, Stewart Information Services Corporation (SISCO). The Respondent is a title insurance company as defined by § 10-11-102(10), C.R.S. Title insurance companies are also referred to as title insurers and underwriters. Twenty seven title insurance agents, as defined by § 10-11-102(9), C.R.S., are authorized to conduct title insurance business in Colorado on behalf of the Respondent. The Respondent reported \$16,135,497 in direct premiums through 27 agents in Colorado during the examination period. Almost 60% of all direct premium reported by the Respondent is attributable to four (4) of its largest affiliated agencies.
3. In accordance with §§ 10-1-201 to 207, C.R.S., on or about June 22, 1999, the Division completed a market conduct examination of the Respondent. The period of examination was January 1, 1997, to December 31, 1997.
4. In scheduling the market conduct examination and in determining its nature and scope, the Commissioner considered such matters as complaint analyses, underwriting and claims practices, pricing, product solicitation, policy form compliance, market share analyses, and other criteria as set forth in the most

recent available edition of the examiners' handbook adopted by the National Association of Insurance Commissioners, as required by § 10-1-203(1), C.R.S.

5. In conducting the examination, the examiners observed those guidelines and procedures set forth in the most recent available edition of the examiners' handbook adopted by the National Association of Insurance Commissioners and the Colorado insurance examiners handbook. The Commissioner also employed other guidelines and procedures that he deemed appropriate, pursuant to § 10-1-204(1), C.R.S.
6. The market conduct examiners prepared a Report. The Report is comprised of only the facts appearing upon the books, records, or other documents of the Respondent, its agents or other persons examined, or as ascertained from the testimony of the Respondent's officers or agents or other persons examined concerning Respondent's affairs. The Report contains the conclusions and recommendations that the examiners find reasonably warranted based upon the facts.
7. Respondent delivered to the Division written submissions and rebuttals to the Report. In addition, the Division held meetings with Respondent to discuss and consider Respondent's rebuttals and to explain numerous issues regarding the examination and compliance with Colorado law.
8. The Commissioner has fully considered and reviewed the Report, all of Respondent's submissions and rebuttals, and all relevant portions of the examiner's work papers.

CONCLUSIONS OF LAW AND ORDER

9. Unless expressly modified in this Stipulated Order, the Commissioner adopts the facts, conclusions and recommendations contained in the Report. A copy of the Report is attached to the Stipulated Order and is incorporated by reference.
10. Issue A concerns the following violation: Failure to maintain minimum standards in a record of written complaints. Respondent shall ensure that its complaint register complies with Division regulation 6-2-1. The Division's records indicate that Respondent has complied with the corrective actions ordered concerning this violation.
11. Issue B concerns the following violation: Accepting title risks from producers without making or obtaining the requisite producer appointments. Respondent shall review and amend its procedures to ensure that agents are appropriately licensed and appointed in accordance with Colorado law. Respondents shall remit any unpaid appointment fees to the Division. The Division's records indicate that

Respondent has complied with the corrective actions ordered concerning this violation.

12. Issue C concerns the following violation: Misrepresenting the benefits, advantages, conditions, and/or terms of title insurance policies and/or failure to provide written notification to prospective insureds of the Respondent's general requirements for the deletion of exceptions or exclusions to coverage related to unfilled mechanics or materialman's liens.
 - a. The Respondent shall amend its underwriting guidelines to ensure that prospective insureds of owners' title insurance policies concerning single family residences receive written notification of the requirements for the deletion of the Respondent's general exception or exclusion of coverage for unfilled mechanic's or materialman's liens. Alternatively, Respondent may expressly extend this coverage to the insured under the terms of the policy.
 - b. The Respondent shall perform an audit of all claims denied, in whole or in part, due to the general exception or exclusion contained in the title policy for unfilled mechanic's or materialman's liens. The period of the audit shall be from January 1, 1997, until the date of this Stipulated Order, or until the date upon which the Respondent can demonstrate to the Division's satisfaction that it has complied with the requirements set forth in subparagraph (a), above. If claims were denied due to the general exception or exclusion for unfilled mechanic's liens, Respondent shall provide coverage for these claims, or make alternative arrangements with the Division, at the discretion of the Division.

The Division's records indicate that Respondent has complied with the corrective actions ordered concerning this violation.

13. The Commissioner amends the Report as follows: Issue D concerns the following violation: Respondent's failure to provide written notice of mandatory "GAP" coverage for intervening matters found of record between closing and the recording or effective date of title insurance policies.
 - a. Respondent shall amend its underwriting guidelines and other relevant procedures to ensure that all title policies expressly include coverage for intervening matters found of record between the real estate or loan closing and recording of the instruments of conveyance.
 - b. The Respondent shall provide written assurances to the Division that whenever the Respondent issues an owner's title policy covering a single family residence, condominium or townhouse, the Respondent will provide written notice regarding the existence of coverage for matters appearing of record

between the real estate closing transaction and recording.

- c. The Respondent shall perform an audit of all claims denied based, in whole or in part, upon intervening matters occurring during the GAP period. The period of the audit shall be January 1, 1997, until the date of this Stipulated Order or until the date upon which Respondent can demonstrate compliance with subparagraph (a), above, whichever occurs earlier. The Respondent shall accept liability on all claims identified by the audit and refund amounts owed to insureds.

The Division's records indicate that Respondent has complied with the corrective actions ordered concerning this violation.

14. Issue E concerns the following violation: Respondent's failure to include and/or itemize premium charges and/or list endorsements to a policy on a policy declarations page or otherwise include such information within the written terms of title policies issued. The Commissioner amends the recommendations contained in the Report as follows: Respondent shall demonstrate to the Division that it has amended its procedures to ensure that each policy issued clearly evidences a complete contract. The Division's records indicate that Respondent has complied with the corrective actions ordered concerning this violation.
15. Issue F concerns the following violation: Respondent's failure to obtain written closing instructions from all necessary parties when providing closing and/or settlement services for Colorado consumers. Issue F of the Report is amended as follows: The Commissioner concludes that title companies, possibly on an industry-wide basis, incorrectly concluded under prior law that title agencies were not permitted to file closing and settlement fees with the Division. The Commissioner notes that Respondent is an underwriter/insurer and approximately 60% of its title premium was from direct/affiliated operations.

Under prior law, title agencies were, in fact, permitted to file closing and settlement fees and other evidence of compliance with closing and settlement requirements with the Division. The Division's position on underwriter/insurer responsibility regarding closing and settlement requirements is as follows: Where the title agency maintains the schedule of closing and settlement fees, and the underwriter/insurer does not perform the closing and settlement services, the agency, not the underwriter/insurer is responsible for compliance regarding closing and settlement requirements. Where the underwriter/insurer maintains a direct operation, i.e., performs its own closing services through an affiliated agent, the underwriter/insurer is responsible for compliance with closing and settlement requirements.

Accordingly, Respondent shall amend its procedures to ensure that it obtains written closing instructions from all necessary parties for its direct operations and

where it files or maintains closing and settlement fee schedules on behalf of its agents.

The Division's records indicate that Respondent has complied with the corrective actions ordered concerning this violation.

16. Issue G concerns the following violation: Insuring over or issuing commitments to insure over recorded defects in title without complying with regulatory requirements or Respondent rules and guidelines and/or offering to insure risks other than title. The Report is modified as follows. The Commissioner accepts Respondent's explanation and concludes that no significant violation occurred.
17. Issue H concerns the following violation: Respondent's failure to provide adequate financial and statistical data of past and prospective loss and expense experience to justify premium rates and closing and settlement fees and charges. The Commissioner amends the Report as follows: Respondent shall provide the Rates and Forms section of the Division with adequate financial and statistical data of past and prospective loss and expense experience to justify the cited premium rates and closing and settlement fees and charges, where Respondent is responsible for compliance regarding such fees and charges, as set forth in paragraph 15 of this Stipulated Order. The filing should specifically identify and explain how a reasonable profit provision is incorporated into the development of the Respondent's premium rates and closing and settlement fees and charges. A copy of the filing which has been stamped by the Division shall be sent to the Market Conduct section of the Division. Respondent is currently working with the Division to obtain compliance with the corrective actions ordered concerning this violation no later than October 31, 2000.
18. Issue I concerns the following violation: Respondent's use of rates and/or rating rules not on file with the Division and/or misapplication of filed rates. The Commissioner amends the Report as follows:
 - a. Respondent shall review its procedures related to the filing of rates.
 - b. Respondent shall initiate measures, including: 1) in-service training and education of all employees, 2) exploration of existing technology to automate its rate and fee computation process, and 3) refining and simplifying current rate and fee structures, to address, at a minimum, the rating of policies and their applicable endorsements, and utilization of filed charges for fees for services, including, where applicable, closing and settlement services.
 - c. Respondent shall utilize rates in connection with the issuance of a title policy which accurately reflect the rates on file with the Division, and shall utilize fees and charges, including closing and settlement fees concerning direct operations, which accurately reflect those maintained by Respondent pursuant

to SB 00-106.

- d. Respondent shall conduct an audit of rate, premium, charge and fee calculations for calendar year 2001. Respondent may employ an independent auditing firm to conduct the audit. This audit shall consist of an examination of 100 randomly-selected files regarding policies and commitments quoted and written during the calendar year, along with any related closing and settlement services provided by affiliated agencies or direct operations. Respondent shall prepare a written report summarizing the audit. Relevant officers of the Respondent or the independent auditing firm shall certify that they have reviewed all elements of the audit. Respondent shall submit the audit reports to the Division no later than March 31, 2002.
- 1) If the audit reveals an error ratio in excess of 5%, Respondent shall continue to perform annual audits and submit the reports in the manner described in subparagraph (d) above until Respondent can demonstrate compliance to the satisfaction of the Division.
 - 2) An error occurs when Respondent fails to use the rates, fees or charges on file with the Division, whether the rates, fees or charges are in excess of or less than the filed rates.
 - 3) "Error ratio" is the number of files in which a material error is made, divided by the total number of audited files.
 - 4) "Material error" means an error of ten dollars (\$10) or more.

Respondent is currently working with the Division to obtain compliance with the corrective actions ordered concerning this violation no later than October 31, 2000.

19. Issue J concerns the following violation: Respondent's adoption of rate rules, premium charges and closing and settlement fees and charges which are excessive, unfairly discriminatory or which allow improper remuneration of producers of title insurance business. The Commissioner amends the findings and recommendations contained in Issue J as follows: The Commissioner concludes that no significant violations occurred concerning this finding and therefore no corrective action or fine is imposed.
20. Issue K concerns the following violation: Respondent's failure to implement reasonable standards for the prompt investigation of claims. Respondent shall provide documentation to the Division that it has adopted and implemented standards ensuring timely claims investigations. The Division's records indicate that Respondent has complied with the corrective actions ordered concerning this violation.

21. Issue L concerns the following violation: Respondent's failure to attempt in good faith to effectuate prompt, fair, and equitable settlements of claims in which liability has become reasonably clear. The Report is modified as follows. The Commissioner accepts Respondent's explanation and concludes that no significant violation occurred.
22. Issue M concerns the following violation: Misrepresentation of pertinent facts or insurance policy provisions relating to the coverage at issue. The Report is modified as follows. The Commissioner accepts the Respondent's explanation concerning surveys and concludes that no violation of § 10-3-1104, C.R.S. occurred with respect to the survey issue. Respondent shall review and amend its procedures and those of its authorized agents relating to the handling of claims to ensure that all claims arising under insurance policies, whether received by authorized agents or directly by the Respondent, will be acknowledged and acted upon in accordance with statutory requirements. The Division's records indicate that Respondent has complied with the corrective actions ordered concerning this violation.
23. Issue N concerns the following violation: Respondent's refusal to pay claims without conducting a reasonable investigation based upon all available information. Respondent shall review and amend its claims handling procedures to assure that Respondent's adjusters will document claims files to reflect the adjuster's processes and methodology of valuing claims. The procedures must assure that the Respondent's adjusters obtain true and correct copies of relevant policies and that they conduct a complete investigation based upon all available information before claims are denied. The Division's records indicate that Respondent has complied with the corrective actions ordered concerning this violation.
24. Issue O concerns the following violation: Respondent's failure to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies. Respondent shall review and amend its procedures and those of its authorized agents relating to the handling of claims to ensure that all claims arising under insurance policies, whether received by authorized agents or directly by the Respondent, will be acknowledged and acted upon in accordance with statutory requirements. The Division's records indicate that Respondent has complied with the corrective actions ordered concerning this violation.
25. Issue P concerns the following violation: Respondent's failure to affirm or deny coverage of claims within a reasonable time after receipt of proof of loss. The Report is modified as follows. The Commissioner accepts Respondent's explanation and concludes that no significant violation occurred.
26. Issue Q concerns the following violation: Respondent's failure to produce and/or maintain adequate records for market conduct review and/or failure to implement claims handling procedures. Respondent shall review and amend its record

maintenance procedures regarding claims handling to assure adequate claims handling, including maintaining files that clearly show the inception, handling and disposition of each claim. The Division's records indicate that Respondent has complied with the corrective actions ordered concerning this violation.

27. Issue R concerns the following violation: Respondent's failure to file a Colorado Uniform Financial Reporting Plan and/or failure to submit an annual filing of sufficient financial data to justify Respondent rates. Respondent shall amend its procedures to ensure filing of the Colorado Uniform Financial Reporting Plan and/or submit an annual filing of sufficient financial data to justify Respondent's rates with the Rates and Forms section of the Division. The Division's records indicate that Respondent has complied with the corrective actions ordered concerning this violation.
28. Pursuant to § 10-1-205(3)(d), C.R.S., Respondent shall pay a civil penalty to the Division in the amount of Twenty-Five Thousand and no/100 dollars (\$25,000.00). This fine represents a combined fine for the cited violations of Colorado law. This fine was calculated in accordance with Division guidelines for assessing penalties and fines, including Division bulletin No. 1-98, issued on January 1, 1998.
29. All requirements with this Stipulated Order shall be completed within thirty (30) days of the date of this Stipulated Order, unless a different time frame is specifically noted in the Stipulated Order. Respondent shall submit written evidence of compliance with all requirements to the Division within the thirty (30) day time frame, except where Respondent has already complied, as specifically noted in the Stipulated Order. Copies of any rate and form filings shall be provided to both the rate and forms section and the market conduct section. All audit reports must be received within ninety (90) days of the Stipulated Order, with a summary of the findings, including any and all monetary payments to covered persons, unless a different time frame is specifically noted in the Stipulated Order.
30. This Stipulated Order shall not prevent the Division from commencing future agency action relating to conduct of the Respondent not specifically addressed in the Report, not resolved according to the terms and conditions in this Stipulated Order, or occurring before or after the examination period. Respondent's failure to comply with the terms of this Stipulated Order may result in additional proceedings, penalties and sanctions as provided for by law.

WHEREFORE: It is hereby ordered that the findings and conclusions contained in the final Report dated June 22, 1999, are hereby adopted as may be modified by this Stipulated Order, and are filed and made an official record of this office. The above Stipulated Order is hereby approved this 16th day of October 2000.



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